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No. 75-1557

In the Supreme Court of the United States

OCTOBER TERM, 1975

WOODROW YOKUM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks review of the Court of Claims' holding that the statute of limitations (28 U.S.C. 2501) barred his suit to recover the reasonable value of property that the federal government took from him.

1. During February and March of 1967 the government seized a quantity of personal property from petitioner. It has exercised dominion and control of the property since that time (Pet. App. 3a).[1] All of the property was seized pursuant to search warrants, which stated that the "property was embezzled, stolen, purloined and converted from the said United States of America and then concealed and retained with intent to convert said [property] for personal use and gain * * *" (*id.* at 2a).

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[1]The property consisted of automobiles, military trailers, trucks, electronic and radio equipment, military clothing, electric generating equipment, and other similar property (Pet. App. 1a).

Petitioner was convicted of crimes growing out of appropriation of federal property.[2] After the convictions became final, he filed a motion in the United States District Court for the Northern District of West Virginia for the return of the property, pursuant to Fed. R. Crim. P. 41(e). On May 29, 1970, the district court denied the motion. On January 2, 1975, almost five years after the denial of the Rule 41(e) motion and eight years after the seizure, petitioner brought this suit in the Court of Claims. The Court of Claims held that petitioner's action was barred by the six-year statute of limitations (Pet. App. 1a-5a).

2. The decision below is correct. There is no conflict among the circuits and no reason for review by this Court.

As the Court of Claims held (Pet. App. 3a-4a):

> It is well settled that a cause of action for a Fifth Amendment taking accrues at the time the taking occurs, i.e., when the owner is deprived of the use and possession thereof. *Stafford Ordinance Corp.* v. *United States,* 123 Ct. Cl. 787, 793, 108 F. Supp. 378, 381 (1952); *Steel Improvement & Forge Co.* v. *United States,* 174 Ct. Cl. 24, 29-30, 355 F.2d 627, 631 (1966).

See also *United States* v. *Dickinson,* 331 U.S. 745; *United States* v. *422,978 Square Feet of Land,* 445 F.2d 1180

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[2]Petitioner, the former Highway Supervisor for the West Virginia State Road Commission, was convicted on six counts of violating 18 U.S.C. 2312 (interstate transportation of stolen motor vehicles), one count of violating 18 U.S.C. 2314 (transportation of stolen property in interstate commerce), and two counts of violating 18 U.S.C. 641 (theft of government property). *United States* v. *Yokum,* 417 F. 2d 253 (C.A. 4), certiorari denied, 397 U.S. 907, rehearing denied, 397 U.S. 1030. Petitioner also was indicted on 31 counts in Virginia. That indictment was dismissed on July 9, 1970, after his West Virginia convictions became final.

(C.A. 9). In this case, petitioner's own pleadings state that the taking occurred in February and March of 1967, when the property was seized, and that "[t]he United States has exercised dominion and control of all the property * * * from the respective dates of the seizures to the present" (Pet. App. 3a).

In an effort to avoid the bar of the statute of limitations, petitioner contends that his cause of action did not accrue until April 6, 1970, when this Court denied his motion for rehearing on his petition for a writ of certiorari. This contention was properly rejected by the Court of Claims "on the ground that a determination of the lawfulness of the search warrants under Fourth Amendment standards has no bearing on the question of the ownership of the property. See *Warden* v. *Hayden,* 387 U.S. 294 (1967)" (Pet. App. 4a). The other dates suggested by petitioner for the accrual of his cause of action (Pet. 6) similarly have no relationship to the question whether petitioner is the owner of the property in question, and hence do not bear on the limitations period.[3]

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1976.

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[3]There is nothing to petitioner's position that the government promised to return the property between 1971 and 1973 and that these promises tolled the statute of limitations (Pet. 9-10). The record shows that there were no new promises which would toll the statute of limitations. The "promises" upon which petitioner relies are nothing more than statements that the United States would return the property if petitioner could establish that he was its lawful owner. See, *e.g.,* Pet. App. 8a, 10a. Because the officials in question believed then (and still believe) that the property in question had been stolen from the government, they did not unconditionally promise to return it to petitioner.